

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 19181 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

RAGHUNATH KARSHANBHAI RABARI
Versus
MAMLATDAR & A L T AND ANOTHER

=====

Appearance :

MR SHITAL R PATEL for the Petitioners
MR SATYAM CHHAYA, ASSTT GOVERNMENT PLEADER for the Respondents

=====

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 09/10/2007

ORAL JUDGMENT

1. Heard Mr. Shital R. Patel, learned advocate for the petitioners, and Mr. Satyam Chhaya, learned Assistant Government Pleader, for the respondents.

2. Mr. Patel, learned advocate for the petitioners, vehemently argued the matter, submitting that the judgment and order of the Deputy Collector and the Gujarat Revenue Tribunal are not in accordance with law. He strenuously submitted that the so-called Tenancy Appeal No. SR 25 of 1987, which is stated to have been filed by the father of the petitioners, ought not to have been taken into consideration once it was informed to the authorities that the father of the petitioner had died in the year 1985.

The learned advocate for the petitioners also invited attention of the Court to 7/12 extract produced by Mr. Satyam Chhaya, learned Assistant Government Pleader, that right in the year 1983-1984, 7/12 extract shows that there was cultivation of 'Juwar' and method of cultivation was one, i.e. by the landlord himself.

The learned advocate for the petitioners asserts that the cultivation continues even as on

date. In view of that, the order passed by the Mamlardar dated 30.06.1983, granting 90 days time to put the land to the original use stands complied with and, therefore, nothing further could have been done in the matter and the entry made in Village Form No.6, bearing No.1651 dated 09.09.1983, had no consequence and the same be treated to be 'non-existence'.

3. Mr. Satyam Chhaya, learned Assistant Government Pleader, produced a copy of the appeal memo, being Tenancy Appeal No.SR-25 of 1987, showing that the same was prepared on 05.03.1987 and it was signed by one Karshanbhai Lalabhai/ Bavabhai and also the Vakalatnama of learned advocate Shri Prithvisinh Pratapsinh Bihola, signed by one Karshanbhai Lalabhai/ Bavabhai, that is also dated 05.03.1987. He submitted that, therefore, the submission of the petitioners that his father did not file the appeal cannot be accepted.

The submission of the learned Assistant Government Pleader does not warrant any acceptance for the simple reason that the factum of death of Shri Karshanbhai cannot be denied in light of the death certificate produced by the petitioners. Besides, it is asserted by learned advocate Mr. Patel that the father of the petitioners was not educated and he never used to sign any document. He was affixing his thumb impression and, in view of that, the appeal and the Vakalatnama cannot be attributed to the father of the petitioners.

4. Learned Assistant Government Pleader Mr. Chhaya also contended that order passed by the Deputy Collector in Tenancy Appeal No. 25 of 1987 dated 04.05.1990, which came to the knowledge of the petitioners after order of the Deputy Collector dated 27.01.2006, ought to have been challenged and it is not challenged by the petitioners and hence, the said order should be treated as binding on the petitioners.

5. The submission of Mr. Chhaya, learned Assistant Government Pleader, is devoid of any merit. It is the case of the petitioners that the father of the petitioners died in the year 1985, there was no question of the father filing the Appeal in the year 1987. In light of that specific case of the petitioners that the father of the petitioners expired in 1985, to expect from the petitioners to challenge the order passed in an appeal disowned by the petitioners, cannot be considered to be a reasonable expectation.

6. Taking into consideration the totality of the facts and circumstances of the case, it is a case wherein a person who was granted the land for agricultural purpose, used it to have a brick kiln. But, soon after the order was passed by the Mamlatdar, the use was changed, within the prescribed time. The Government ought to have condoned the lapse on the part of the petitioners

and should have allowed the petitioners to continue to use for the purpose for which it was granted.

7. In the result, the petition is allowed. The order passed by the Tribunal in Revision Application No. TEN.B.A. 191 of 2006 dated 9.4.2006, whereby order of the Deputy Collector (L.R.) Appeal, Gandhinagar in Tenancy Appeal No.55 of 2005 dated 27.1.2006, is hereby quashed and set aside. Order passed by the Mamlatdar dated 25.8.1983 stands complied as the land is already put to the original use, i.e. agricultural operations, nothing further requires to be done in the matter. Rule is made absolute.

(RAVI R. TRIPATHI, J.)

omkar